



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to hear the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided a registered mail tracking number as proof of service of the hearing documents and testified that the registered mail was returned as refused by recipient. Documents sent to a tenant's residence by registered mail are deemed to be served five days later, pursuant to section 90 of the Act, even if the recipient refuses service. I was satisfied the tenant was sufficiently served with notification of this hearing and I proceeded to hear from the landlord without the tenant present.

The landlord requested that the monetary claim be amended to include loss of rent for April 2011 as the tenant continues to occupy the rental unit and authorization to retain the security deposit in partial satisfaction of the rent owed. I granted the landlord's request for amendment and considered these issues with this decision.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent and loss of rent for March and April 2011?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced March 1, 2011 and the tenant paid a \$375.00 security deposit. The tenant is required to pay rent of \$750.00 on the 1st day of every month. The tenant failed to pay rent and on March 11, 2011 a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) was posted on the tenant's door in the presence of a witness. The Notice indicates rent of \$750.00 was outstanding as of March 1, 2011 and has a stated effective date of March 20, 2011. The tenant did not pay the outstanding rent or dispute the Notice. The landlord last saw the tenant at the rental unit yesterday.

In addition to an Order of Possession, the landlord is seeking to recover unpaid rent and loss of rent for the months of March and April 2011. Provided as documentary evidence for this proceeding was a copy of the tenancy agreement; the 10 Day Notice; and, proof of service of the 10 Day Notice.

Analysis

The Act provides that when a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental unit by the effective date. I am satisfied the landlord served the tenant by posting the Notice on the door which means the tenant is deemed to have received it three days later on March 14, 2011. I am further satisfied that the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice. Accordingly, I find the tenancy ended March 24, 2011 in accordance with section 53 of the Act.

Since the tenant continues to occupy the rental unit the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

I am satisfied that the landlord is entitled to recover unpaid rent of \$750.00 from the tenant for the month of March and loss of rent for the month of April 2011 since the tenant continues to occupy the rental unit.

As the landlord was successful with this application, I also award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed by the tenant. I provide for the landlord with this decision a Monetary Order calculated as follows:

Unpaid rent – March 2011	\$ 750.00
Loss of rent – April 2011	750.00
Filing fee	50.00
Less: security deposit	<u>(375.00)</u>
Monetary Order	<u>\$ 1,175.00</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$1,175.00 to serve upon the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2011.

Residential Tenancy Branch